

EXHIBIT A

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RECEIVED

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ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

Diversi-Plast Products, Inc.,)

a Minnesota corporation,)

Plaintiff,)

vs.)

Battens Plus, Inc.,)

a California corporation,)

Defendant.)

Civil Action No: 2:04-CV-01005 PGC

Judge: Paul G. Cassell

**PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.'S RESPONSES TO DEFENDANT
BATTENS PLUS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-43)**

TO: Defendant Battens Plus, Inc. above-named and its attorneys, Daniel N. Ballard, Esq. and Michael S. Wilcox, Esq., McDonough, Holland & Allen, PC, 555 Capitol Mall, 9th Floor, Sacramento, California 95814; and Adam Price, Esq., Jones, Waldo, Holbrook & McDonough, 170 South Main Street, Suite 1500, Salt Lake City, Utah 84101.

GENERAL OBJECTIONS AND COMMENTS

1. Diversi-Plast objects to each Request to the extent it seeks information subject to the attorney-client privilege, work product doctrine, or other privileges and rules of law on the grounds that such matter is exempt from discovery.

2. Diversi-Plast objects to any and all instructions or definitions provided by Battens Plus which seeks to impose requirements beyond those contained in the Federal Rules of Civil Procedure.

3. Diversi-Plast reserves the right to serve supplemental responses to these Requests for Admission pursuant to Fed. R. Civ. P. 26(e)(2).

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that the only claim of the '193 patent that you are asserting that Battens Plus has infringed is claim 2.

RESPONSE:

Diversi-Plast objects to this Request on the grounds that it is premature as the '193 Patent is currently in a reexam/reissue proceeding and the final claim language of the '193 Patent has yet to be determined. Subject to and without waiving this objection, or the General Objections, Diversi-Plast admits that the only claim it asserts Battens Plus is infringing as of the date of this response is claim 2 of the '193 Patent.

REQUEST FOR ADMISSION NO. 2:

Admit that before you filed your complaint in this action you asserted in a declaration to the United States and Patent Office [sic] ("USPTO") that claim 2 of the '193 patent is indefinite.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 3:

Admit that claim 2 of the '193 patent was indefinite at the time you filed your complaint in this action.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 4:

Admit that claim 2 of the '193 patent is indefinite.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 5:

Admit that before you filed your complaint in this action you asserted in a declaration to the United States and Patent Office [sic] that claim 2 of the '193 patent is unenforceable.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 6:

Admit that claim 2 of the '193 patent was unenforceable at the time you filed your complaint in this action.

RESPONSE:

Diversi-Plast objects to this Request to the extent it seeks legal conclusions. Subject to and without waiving this objection, or the General Objections, Diversi-Plast denies this Request.

REQUEST FOR ADMISSION NO. 7:

Admit that claim 2 of the '193 patent as granted is unenforceable.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 8:

Admit that claim 2 of the '193 patent as granted is invalid.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 9:

Admit that you surrendered the '193 patent when you requested that it be reissued.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 10:

Admit that the '193 patent was not presumptively valid during the reissue proceeding you initiated.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 11:

Admit that you were aware that the '193 patent was not presumptively valid during the reissue proceeding you initiated.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 12:

Admit that the '193 patent is not presumptively valid during the current combined reissue/reexamination proceeding.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 13:

Admit that you are aware that the '193 patent is not presumptively valid during the current combined reissue/reexamination proceeding.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 14:

Admit that the document produced at DP 028120-13 [sic] is marketing material currently used by Diversi-Plast Products, Inc. to market its Flow-Thru Batten.

RESPONSE:

Diversi-Plast objects to this Request on the grounds that it has not produced any document Bates numbered DP 028120-13. To the extent that the request seeks an admission regarding document Bates numbered DP 02812-13, Diversi-Plast admits that the document with that Bates number is marketing material used by Diversi-Plast to market its Flow-Thru Batten.

REQUEST FOR ADMISSION NO. 15:

Admit that you assert in your current marketing material that your Flow-Thru Batten is covered by the '193 patent.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 16:

Admit that after March 19, 2002 you released to the public marketing material that asserted your Flow-Thru Batten was covered by the '193 patent.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 17:

Admit that you have no evidence that Batten [sic] Plus makes, uses, or sells tiles of the kind that could be used to practice any invention disclosed in the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 18:

Admit that you have no evidence that Batten [sic] Plus makes, uses, or sells an overlayment of the kind that could be used to practice any invention disclosed in the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 19:

Admit that you have no evidence that Battens Plus infringes the tile element of claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 20:

Admit that you have no evidence that Battens Plus infringes the overlayment element of claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 21:

Admit that the evidence you have does not support a claim that Battens Plus infringes every element of claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 22:

Admit that you do not assert that Battens Plus infringes every element of claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 23:

Admit that battens Plus does not infringe claim 2 of the patent in suit under 35 U.S.C. section 271(a).

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 24:

Admit that you are limiting your claims in this action to the claims that Battens Plus is infringing claim 2 of the '193 patent via contributory infringement and by inducing others to infringe claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 25:

Admit that during the current combined reissue/reexamination proceeding you have proposed to the USPTO that the following claim language accurately describes the invention disclosed in claim 2 of the '193 Patent:

"A tile roof system, comprising:

an overlayment;

a tile; and

a batten disposable between the tile and the overlayment, the batten comprising:

at least one layer comprising generally planar first plies and a second ply, the first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the batten and in which the second ply includes a multiplicity of cross plies extending between the first plies."

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "accurately describes the invention disclosed in claim 2." Diversi-Plast admits that the following represents claim 2 of the '193 Patent as it is currently pending before the USPTO:

2. (Twice Amended) (The batten of claim 1.) A tile roof system, comprising:

an overlayment;

a tile; and

a batten disposable between the tile and the overlayment, the batten comprising:

at least one layer comprising generally planar first plies and a second ply,

the first and second plies cooperating to define a multiplicity of passages

extending generally transversely to a longitudinal axis of the batten, and in which the

second ply includes a multiplicity of cross plies extending between the first plies.

REQUEST FOR ADMISSION NO. 26:

Admit that the overlayment element identified in the claim recited in Request for Admission No. 25 is identical to the overlayment element in claim 2 of the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the overlayment element identified in the claim recited in Request for Admission No. 25" and, therefore, is unable to admit or deny this Request.

REQUEST FOR ADMISSION NO. 27:

Admit that the tile element identified in the claim recited in Request for Admission No. 25 is identical to the tile element in claim 2 of the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the tile element identified in the claim recited in Request for Admission No. 25" and, therefore, is unable to admit or deny this Request.

REQUEST FOR ADMISSION NO. 28:

Admit that Mark Stoll contributed to the conception of the invention of the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request to the extent it seeks legal conclusions. Subject to and without waiving this objection, or the General Objections, Diversi-Plast denies this Request.

REQUEST FOR ADMISSION NO. 29:

Admit that Gary Urbanski contributed to the conception of the invention of the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request to the extent it seeks legal conclusions. Subject to and without waiving this objection, or the General Objections, Diversi-Plast denies this Request.

REQUEST FOR ADMISSION NO. 30:

Admit that Richard Morris did not conceive of any invention claimed in the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request to the extent it seeks legal conclusions. Subject to and without waiving this objection, or the General Objections, Diversi-Plast denies this Request.

REQUEST FOR ADMISSION NO. 31:

Admit that prior to November 15, 2005 Lars Walberg had no obligation to assign to you any rights he may have had to the invention described in the '193 patent.

RESPONSE:

Diversi-Plast objects to this Request to the extent it seeks legal conclusions. Subject to and without waiving this objection, or the General Objections, Diversi-Plast admits that it is not presently aware of any legal or contractual obligation of Lars Walberg to assign any rights to the '193 Patent prior to November 15, 2005.

REQUEST FOR ADMISSION NO. 32:

Admit that the batten described in claim 2 of the '193 patent can be used for applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the batten described in claim 2 of the '193 patent can be used for applications other than between a tile and a roof overlayment" as claim 2 is directed to a tile roof system and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 33:

Admit that the batten described in the claim recited in Request for Admission No. 25 can be used for applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the batten described in the claim recited in Request for Admission No. 25 can be used for applications other than between a tile and a roof overlayment" and, therefore, is unable to admit or deny this Request.

REQUEST FOR ADMISSION NO. 34:

Admit that you offer for sale the batten described in claim 2 of the '193 patent for use in applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the batten described in claim 2 of the '193 patent for use in applications other than between a tile and a roof overlayment" and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 35:

Admit that you offer for sale the batten described in the claim recited in Request for Admission No. 25 for use in applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the batten described in the claim recited in Request for Admission No. 25 for use in applications other than between a tile and a roof overlayment" and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 36:

Admit that the Trimline Flow-Thru Batten can be used in applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the Trimline Flow-Thru Batten can be used in applications other than between a tile and a roof overlayment" as the Trimline Flow-Thru Batten is sold and used for tile roof systems and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 37:

Admit that the Trimline Flow-Thru Batten is sold by you to be used in applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the Trimline Flow-Thru Batten is sold by you to be used in applications other than between a tile and a roof overlayment" as the Trimline Flow-Thru Batten is sold and used for tile roof systems and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 38:

Admit that the accused product can be used for applications other than between a tile and a roof overlayment.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "the accused product can be used for applications other than between a tile and a roof overlayment" as Diversi-Plast is only aware of the accused product being sold and used for tile roof systems and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 39:

Admit that you have not licensed the patent in suit.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 40:

Admit that the "roof ventilator" described in your U.S. Patent No. 5,304,095 describes the batten you claim in claim 2 of the '193 patent.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 41:

Admit that the "roof ventilator" described in your U.S. Patent No. 5,304,095 describes the batten you claim in the claim recited in Request for Admission No. 25.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 42:

Admit that in your response to the Office Action dated November 22, 2005 in the current combined reissue/reexamination proceeding you did not attempt to distinguish the batten you claim in claim 2 of the '193 patent from the roof ventilator described in your U.S. Patent No. 5,304,095.

RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "did not attempt to distinguish the batten you claim in claim 2 of the '193 patent from the roof ventilator described in your U.S. Patent No. 5,304,095." Subject to and without waiving this objection, or the General Objections, Diversi-Plast denies this Request.

REQUEST FOR ADMISSION NO. 43:

Admit that in your response to the Office Action dated November 22, 2005 in the current combined reissue/reexamination proceeding you did not attempt to distinguish the batten you describe in the claim recited in Request for Admission No. 24 from the roof ventilator described in your U.S. Patent No. 5,304,095.


RESPONSE:

Diversi-Plast objects to this Request as being vague and ambiguous as to the meaning of "did not attempt to distinguish the batten you describe in the claim recited in Request for Admission No. 24 from the roof ventilator described in your U.S. Patent No. 5,304,095." Diversi-Plast further objects that there is no claim recited in Request for Admission No. 24. Subject to and without waiving these objections, or the General Objections, Diversi-Plast denies this Request.

PATTERSON, THUENTE,
SKAAR & CHRISTENSEN, P.A.

Date: February 13, 2006

By:


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